

AMENDED IN ASSEMBLY AUGUST 31, 2015

AMENDED IN ASSEMBLY AUGUST 20, 2015

AMENDED IN ASSEMBLY JUNE 25, 2015

AMENDED IN ASSEMBLY JUNE 8, 2015

AMENDED IN SENATE APRIL 15, 2015

SENATE BILL

No. 197

Introduced by Senator Block

February 10, 2015

An act to add Sections 22602, 22603, and 22604 to the Financial Code, relating to finance lenders.

LEGISLATIVE COUNSEL'S DIGEST

SB 197, as amended, Block. Finance lenders: commercial loan: referral.

Existing law, the California Finance Lenders Law, provides for the licensure and regulation of finance lenders by the Commissioner of Business Oversight. Existing law makes a willful violation of the law by any person a crime. Existing law defines a finance lender as any person who is engaged in the business of making consumer loans or commercial loans. Existing law defines a commercial loan as a loan of a principal amount of \$5,000 or more, or any loan under an open-end credit program, whether secured by either real or personal property, or both, or unsecured, the proceeds of which are intended by the borrower for use primarily for purposes other than personal, family, or household.

This bill would authorize a licensed finance lender to compensate an unlicensed person in connection with the referral, as defined, of one or more prospective borrowers to the licensee for a commercial loan if

certain requirements are met. These requirements would include, among other things, that the referral leads to the consummation of a commercial loan, the loan contract provides for an annual percentage rate that does not exceed a certain percentage, the licensed finance lender obtains documentation from the prospective borrower documenting the borrower's commercial status, ~~as specified~~, and that the licensee maintains records of compensation paid to an unlicensed person, as specified. The bill would make a licensee *paying compensation to an unlicensed person in connection with a referral* liable for any misrepresentation made to a borrower in connection with ~~a~~ *that* loan made to that borrower by that licensee. The bill would authorize the commissioner to adopt regulations imposing conditions on this referral activity, as specified. The bill would also require a licensed finance lender who receives an application for a commercial loan from a prospective borrower who has been referred by an unlicensed person to provide a specified statement to the borrower regarding the referral arrangement. The bill would prohibit any person receiving compensation in connection with a referral that leads to the consummation of a commercial loan from engaging in specified acts and would authorize the commissioner to order this person to desist and refrain from engaging in the business or further violating those provisions governing such referral.

By creating new requirements, the willful violation of which would be a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 22602 is added to the Financial Code, to
- 2 read:
- 3 22602. (a) A licensee that is a finance lender may pay
- 4 compensation to a person that is not licensed pursuant to this
- 5 division in connection with the referral of one or more prospective

1 borrowers to the licensee, when all of the following conditions are
2 met:

3 (1) The referral by the unlicensed person leads to the
4 consummation of a commercial loan, as defined in Section 22502,
5 between the licensee and the prospective borrower referred by the
6 unlicensed person.

7 (2) The loan contract provides for an annual percentage rate
8 that does not exceed 36 percent.

9 (3) Before approving the loan, the licensee does both of the
10 following:

11 (A) Obtains documentation from the prospective borrower
12 documenting the borrower's commercial status. Examples of
13 acceptable forms of documentation include, but are not limited to,
14 a seller's permit, business license, articles of incorporation, income
15 tax returns showing business income, or bank account statements
16 showing business income.

17 (B) Performs underwriting and obtains documentation to ensure
18 that the prospective borrower will have sufficient monthly gross
19 revenue with which to repay the loan pursuant to the loan terms,
20 and does not make a loan if it determines through its underwriting
21 that the prospective borrower's total monthly expenses, including
22 debt service payments on the loan for which the prospective
23 borrower is being considered, will exceed the prospective
24 borrower's monthly gross revenue. Examples of acceptable forms
25 of documentation for verifying current and projected gross monthly
26 revenue and monthly expenses include, but are not limited to, tax
27 returns, bank statements, merchant financial statements, business
28 plans, business history, and industry-specific knowledge and
29 experience. If the prospective borrower is a sole proprietor or a
30 corporation and the loan will be secured by a personal guarantee
31 provided by the owner of the corporation, a credit report from at
32 least one consumer credit reporting agency that compiles and
33 maintains files on consumers on a nationwide basis shall also be
34 considered.

35 (4) The licensee maintains records of all compensation paid to
36 unlicensed persons in connection with the referral of borrowers
37 for a period of at least four years.

38 (5) The licensee annually submits information requested by the
39 commissioner regarding the payment of compensation in the report
40 required pursuant to Section 22159.

~~(b) A licensee shall be liable for any misrepresentation made to a borrower in connection with a loan made to that borrower by that licensee.~~

(b) A licensee that pays compensation to a person that is not licensed pursuant to this division in connection with a referral for a commercial loan made by that licensee to a borrower shall be liable for any misrepresentation made to that borrower in connection with that loan.

~~(c) For purposes of this section, “referral” means either the introduction of the borrower and the finance lender or the delivery to the finance lender of the borrower’s contact information. The following activities by an unlicensed person are not authorized by this section, unless the unlicensed person is exempt from licensure under this division, is exempt from federal income taxes under Section 501(c)(3) of the Internal Revenue Code, is a business assistance organization recognized by the United States Small Business Administration, or the person engages in one or more of the following activities in connection with five or fewer commercial loans in a 12-month period made by persons licensed under this division:~~ *section:*

- ~~(1) Participating in any loan negotiation.~~
 - ~~(2) Counseling or advising the borrower about a loan.~~
 - ~~(3) Participating in the preparation of any loan documents, including credit applications.~~
 - ~~(4) Contacting the licensee on behalf of the borrower other than to refer the borrower.~~
 - ~~(5) Gathering loan documentation from the borrower or delivering the documentation to the licensee.~~
 - ~~(6) Communicating lending decisions or inquiries to the borrower.~~
 - ~~(7) Participating in establishing any sales literature or marketing materials.~~
 - ~~(8) Obtaining the borrower’s signature on documents.~~
- ~~(d) The prohibitions in subdivision (c) do not apply if the unlicensed person meets one or more of the following criteria:~~
- ~~(1) Is exempt from licensure under this division.~~
 - ~~(2) Is exempt from federal income taxes under Section 501(c)(3) of the Internal Revenue Code.~~
 - ~~(3) Is a business assistance organization recognized by the United States Small Business Administration.~~

1 (4) *Is engaged in one or more of the activities described in*
2 *paragraphs (1) to (8), inclusive, of subdivision (c) in connection*
3 *with five or fewer commercial loans in a 12-month period made*
4 *by persons licensed under this division.*

5 ~~(d)~~

6 (e) The commissioner may adopt regulations under this section
7 to impose conditions on the referral activity authorized under this
8 section. The commissioner may classify persons, loans, loan terms,
9 referral methods, and other matters within his or her jurisdiction,
10 and may prescribe different requirements for different classes of
11 loans.

12 ~~(e)~~

13 (f) Nothing in this section shall authorize the payment of a
14 referral fee to an unlicensed person for a residential mortgage loan,
15 nor the payment of a referral fee to a person required to be licensed
16 under Section 10131 or 10131.1 of the Business and Professions
17 Code, unless such person is licensed by the Bureau of Real Estate
18 pursuant to Division 4 (commencing with Section 10000) of the
19 Business and Professions Code.

20 (g) *For the purposes of this section, “referral” means either*
21 *the introduction of the borrower and the finance lender or the*
22 *delivery to the finance lender of the borrower’s contact*
23 *information.*

24 SEC. 2. Section 22603 is added to the Financial Code, to read:

25 22603. A licensee that is a finance lender shall provide a
26 prospective borrower who has been referred by an unlicensed
27 person the following written statement, in 10-point font or larger,
28 at the time the licensee receives an application for a commercial
29 loan, and shall require the prospective borrower to acknowledge
30 receipt of the statement in writing:

31
32 “You have been referred to us by [Name of Unlicensed Person].
33 If you are approved for the loan, we may pay a fee to [Name of
34 Unlicensed Person] for the successful referral. [Licensee], and not
35 [Name of Unlicensed Person] is the sole party authorized to offer
36 a loan to you. You should ensure that you understand any loan
37 offer we may extend to you before agreeing to the loan terms. If
38 you wish to report a complaint about this loan transaction, you
39 may contact the Department of Business Oversight at

1 1-866-ASK-CORP (1-866-275-2677), or file your complaint online
2 at www.dbo.ca.gov.”

3
4 SEC. 3. Section 22604 is added to the Financial Code, to read:
5 22604. (a) Any person that receives compensation in
6 connection with a referral, as described in Section 22602, that
7 leads to the consummation of a commercial loan under this division
8 may not do any of the following:

9 (1) Make a materially false or misleading statement or
10 representation to a prospective borrower about the terms or
11 conditions of a prospective loan.

12 (2) Advertise, print, display, publish, distribute, or broadcast
13 any statement or representation with regard to the conditions for
14 making or negotiating a loan that is false, misleading, or deceptive,
15 or that omits material information that is necessary to make the
16 statements made not false, misleading, or deceptive.

17 (3) Engage in any act in violation of Section 17200 of the
18 Business and Professions Code.

19 (4) Commit an act that constitutes fraud or dishonest dealings.

20 (5) Fail to safeguard a prospective borrower’s personally
21 identifiable information.

22 (b) For purposes of this section, “personally identifiable
23 information” means information that is not publicly available, that
24 a prospective borrower provides for the purpose of obtaining a
25 loan or other financial product. Personally identifiable information
26 includes information a prospective borrower provides on an
27 application to obtain a loan, credit card, or other financial product
28 or service.

29 (c) Whenever, in the opinion of the commissioner, any person
30 is engaged in the business of soliciting borrowers for a loan to be
31 made by a licensee under this division, and the person is not in
32 compliance with this section, Section 22602, Section 22603, or
33 any other provision of this division authorizing such activity or
34 exempting the person from this division, the commissioner may
35 order the person to desist and to refrain from engaging in the
36 business or further violating this division.

37 SEC. 4. No reimbursement is required by this act pursuant to
38 Section 6 of Article XIII B of the California Constitution because
39 the only costs that may be incurred by a local agency or school
40 district will be incurred because this act creates a new crime or

1 infraction, eliminates a crime or infraction, or changes the penalty
2 for a crime or infraction, within the meaning of Section 17556 of
3 the Government Code, or changes the definition of a crime within
4 the meaning of Section 6 of Article XIII B of the California
5 Constitution.

O